

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CJS 14-01 Court System  
**SPONSOR(S):** Civil Justice Subcommittee; Metz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond

### SUMMARY ANALYSIS

In general, this PCB repeals or modifies outdated provisions in the Florida Statutes related to the court system. Specifically:

- Statutes that repeat provisions in the state constitution are repealed as unnecessary.
- Statutes that create additional criteria for judicial office are repealed as such requirements are likely to be found to conflict with constitutional qualifications for office.
- Statutes are amended or repealed to reflect current practices or to eliminate outdated or unnecessary provisions.

This PCB does not appear to have a fiscal impact on state or local governments.

The effective date of the PCB is July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

In general, this PCB repeals or modifies outdated provisions of the Florida Statutes related to the court system. Specifically:

Section 25.151, F.S., prohibits a retired justice from engaging in the practice of law. The statute is not currently enforced, and similar statutes have been found unconstitutional. See *In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973); see also, art. V, s. 15, Fla.Const. (Supreme Court's exclusive jurisdiction over the practice of law). The PCB repeals the statute.

Art. V, s. 3(c), Fla.Const., requires the Supreme Court to appoint a clerk. Section 25.191, F.S., requires the Supreme Court to appoint a clerk. The PCB repeals the statutory requirement, which repeal will have no effect as the same requirement remains in the state constitution.

Art. V, s. 3(c), Fla.Const., requires the Clerk of the Supreme Court to "perform such duties as the court directs." Section 25.231, F.S., provides that the Clerk of the Supreme Court must perform duties as directed by the Supreme Court. The PCB repeals the statutory requirement, which will have no effect as the same requirement remains in the state constitution.

Sections 25.241(1), and 25.281, F.S., provide that the Clerk and Marshall of the Supreme Court are to be paid a salary. Art. V, s. 3(c), Fla.Const., requires that the Clerk and Marshall of the Supreme Court must be paid. The PCB repeals the statutory requirement, which will have no effect as the state constitution requires payment of the salaries and because state employees are paid for performing their duties. See also s. 29.23, F.S., created by this PCB.

Section 25.351, F.S., allows the library of the Supreme Court to purchase books and to trade them with other libraries. It is unclear why this needs to be in statute. The PCB repeals the statutory regarding books, which repeal is unlikely to have any practical effect.

Article V, s. 3(c), Fla.Const., requires that the state be divided into judicial circuits that follow county lines. Section 26.01, F.S., simply provides that there will be 20 judicial circuits. The following statute (s. 26.021, F.S.) provides which counties are in each circuit. The PCB repeals s. 26.01, F.S., merging it into the following statute for simplicity.

Section 26.021, F.S., divides the state into judicial circuits, as required by the state constitution. The statute lists the counties in each judicial circuit. Three of the 20 judicial circuits have special statutory residency requirements. Article V, s. 3(c), Fla.Const., sets the constitutional requirements for eligibility to serve as a justice of judge. The courts have ruled that no additional requirement for judicial office may be created by statute.<sup>1</sup> The PCB adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

Section 26.51, F.S., requires that the salaries of circuit judges be paid "in equal monthly installments." The language first appeared in a 1925 statute setting the salaries of a number of state officials.<sup>2</sup> At the time, salaries were in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials (circuit judges), has remained in statute. The PCB repeals the statutory

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<sup>1</sup> See *Miller v. Mendez*, 804 So.2d 1243 (Fla. 2001)(cannot require residency within circuit at time of qualifying when constitution only requires residency at time of taking office); *Levey v. Dijols*, 990 So.2d 688, 692 (Fla. 4th DCA 2008) ("Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid."), rev. denied, 994 So.2d 304.

<sup>2</sup> Chapter 11335, L.O.F., s. 1 (1925).

requirement that circuit judges be paid in equal monthly installments. The PCB should have no impact on judicial salaries or when they are paid.

Section 26.55, F.S., creates the Conference of Circuit Court Judges. The PCB amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the private practice of law is excluded from automatic membership.
- Provide that membership in the Conference, and operation of the Conference, are as set forth in court rule.
- Change leadership terms to coincide with legislative sessions.
- Eliminate the annual report requirement.
- Make grammatical and technical changes.

Section 27.50, F.S., provides the qualifications for office of a public defender. Article V, s. 18, Fla.Const., provides the same qualifications for office. The PCB repeals the statutory qualifications, which will have no effect as the state constitution contains the same requirements.<sup>3</sup>

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The PCB repeals the statute regarding such expenses, which should have no impact.

The state constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this PCB. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This PCB creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382, F.S. (current law regarding court system budgeting). The newly created statute reflects long-standing policies.

Article V, s. 2(c), Fla.Const., provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The PCB repeals the statutory provision, which repeal would have no practical effect.

Article V, s. 4(a), Fla.Const., requires that 3 judges hear a case before a district court of appeal, and that the "concurrence of two" is required for a decision. Section 35.13, F.S., requires the same. The PCB repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution.

Article V, s. 14(a), Fla.Const., provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The PCB repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this PCB.

Article V, s. 4(c), Fla.Const., requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk

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<sup>3</sup> If the statute had different or additional requirements, it perhaps would be found invalid. See *Miller v. Mendez*, 804 So.2d 1243 (Fla. 2001)(cannot require residency within circuit at time of qualifying when constitutional only requires residency at time of taking office); *Levey v. Dijojs*, 990 So.2d 688, 692 (Fla. 4th DCA 2008) ("Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid."), rev. denied, 994 So.2d 304.

to serve at the pleasure of the court. The PCB repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution.

Article V, s. 4(c), Fla.Const., provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The PCB repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this PCB.

Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal "shall be as prescribed by the rules of the court." No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), Fla.Const., requires the clerk to "perform such duties as the court directs." Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk (or any other employee who serves at the pleasure of an appointing body). The PCB repeals the statute, which repeal is anticipated to have no effect on appellate court clerks or their operation.

Article V, s. 4(c), Fla.Const., provides that the salary of a marshal of a district court of appeal is to be set by general law. Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. The PCB repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this PCB.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated today. The need for the statute has been superseded by art. V, s. 2(b), Fla.Const. (power of the Chief Justice to appoint a judge to another court), Fla.Jud.Admin.R. 2.330 (disqualification of a judge), and the concept of arbitration in general. The PCB repeals the statute allowing the appointment of a judge ad litem.

The Judicial Qualifications Commission is created by art. V, s. 12, Fla.Const. Section 43.20, F.S., recognizes the Judicial Qualifications Commission in statute. A 1996 constitutional amendment increased the membership of the commission from 13 to 15 members. This PCB amends s. 43.20, F.S., to conform to the change from 13 to 15 members.

Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court that the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The PCB repeals the statute.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by said receipt has passed from the United States to the person named in the receipt as having paid for the said land. Federal law in the 1800's recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so "the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor]."<sup>4</sup> The last appellate case under the statute was decided in 1914,<sup>5</sup> and the records of the Florida land grant office show that it closed in 1933.<sup>6</sup> All land grant properties should have had numerous recorded title transactions since then, and reference to such receipts

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<sup>4</sup> *Boley v. Wynn*, 68 Fla. 341, 67 So. 117 (1914). See also, generally, *Yellow River R. Co. v. Harris*, 35 Fla. 385, 17 So. 568 (Fla. 1895).

<sup>5</sup> *Boley v. Wynn*, 68 Fla. 341, 67 So. 117 (1914).

<sup>6</sup> <http://www.archives.gov/research/guide-fed-records/groups/049.html#49.9.7> last accessed on October 29, 2013.

appears outdated and unnecessary. See generally, ch. 712, F.S. (the Marketable Record Title Act). The PCB repeals the statute.

**B. SECTION DIRECTORY:**

Section 1 repeals s. 25.151, F.S., relating to the practice of law by a retired justice.

Section 2 repeals ss. 25.191 and 25.231, F.S., relating to the Clerk of the Supreme Court.

Section 3 repeals a subsection in s. 25.241, F.S., relating to compensation of the Clerk of the Supreme Court.

Section 4 repeals s. 25.281, F.S., relating to compensation of the Marshal of the Supreme Court.

Section 5 repeals s. 25.351, F.S., relating to acquisition of books by the Supreme Court library.

Section 6 repeals s. 26.01, F.S., relating to judicial circuits.

Section 7 amends s. 26.021, F.S., relating to judicial circuits.

Section 8 repeals s. 26.51, F.S., relating to salaries of circuit judges.

Section 9 amends s. 26.55, F.S., relating to the Conference of Circuit Court Judges.

Section 10 repeals ss. 27.50 and 27.55, F.S., relating to the qualifications for office of public defender and to the compensation and expenses of a public defender in a newly created judicial circuit.

Section 11 creates s. 29.23, F.S., relating to the salaries of certain positions in the judicial branch.

Section 12 repeals ss. 35.12, 35.13, 35.19 and 35.21, F.S., relating to district courts of appeal.

Section 13 amends s. 35.22, F.S., relating to the salary of the clerk of a district court of appeal.

Section 14 repeals ss. 35.25 and 35.27, F.S., relating to the duties of the clerk of a district court of appeal and the compensation of the marshal of a district court of appeal.

Section 15 repeals s. 38.13, F.S., relating to appointment of a judge ad litem in a circuit or county court.

Section 16 amends s. 43.20, F.S., relating to the Judicial Qualifications Commission.

Section 17 repeals s. 57.101, F.S., relating to costs in the Supreme Court.

Section 18 repeals s. 92.15, F.S., relating to federal land office receipts in evidence.

Section 19 provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The PCB does not appear to have any impact on state revenues.

**2. Expenditures:**

The PCB does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The PCB does not appear to have any impact on local government revenues.

2. Expenditures:

The PCB does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The PCB does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The PCB does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The PCB does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The PCB should either include repeal of s. 27.01, F.S., or remove the repeal of s. 27.50, F.S., to be consistent.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 5, 2013, the Civil Justice Subcommittee adopted one amendment and reported the PCB favorably. The amendment:

- Removed repeals of ss. 25.211, F.S. (office of the Clerk of the Supreme Court), s. 34.131, F.S. (county courts are open for voluntary pleas of guilty), and s. 86.01, F.S. (court in a declaratory judgment action may award costs).
- Added new s. 29.23, F.S., regarding certain court system salaries, and added a repeal of s. 35.22(1), F.S. (salary of the clerk of a district court of appeal).
- Made grammatical and technical changes.

This analysis is drafted to the PCB as amended by the Civil Justice Subcommittee.